

Public Notice

**U S Army Corps
of Engineers**
Huntington District

In reply refer to Public Notice No.
200401378

Issuance Date: January 10, 2004

Stream: Leslie Branch

Closing Date: February 9, 2004

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Huntington District

ATTN: CELRH-OR-F Public Notice No. (*reference above*)

502 Eighth Street

Huntington, West Virginia 25701-2070

Phone: (304) 399-5710

PUBLIC NOTICE: The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

REGULATORY PROGRAM: Since its early history, the U.S. Army Corps of Engineers (Corps) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the Corps Regulatory Program.

SECTION 10: The Corps is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404: The Corps is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the Corps of Engineers' request to the West Virginia Department of Environmental Protection to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Mid-Vol Coal Sales, Inc.
Post Office Box 1112
Princeton, West Virginia 24740

LOCATION: The project site is located at Latitude 37° 23'14" and Longitude 81° 29'00" on the Keystone U.S. Geological Quadrangle, approximately 0.25 miles southwest of Eckman in Adkin and Browns Creek Districts of McDowell County, West Virginia. The unauthorized and proposed activities have resulted or are proposed to result in disturbances to Leslie Branch and Harmon Branch, both of which are tributaries of the Tug Fork, a navigable (Section 10) water of the U.S.

DESCRIPTION OF THE PROPOSED WORK: The applicant has requested a Department of the Army Permit for unauthorized and proposed discharges of dredged or fill material into waters of the United States (U.S.) in conjunction with mining operations at the Eckman Surface Mine No. 1 (Eckman Mine). The Eckman Mine is an existing combination steep slope contour surface and auger/mountaintop removal surface mining operation. The provided information indicates unauthorized discharges of dredged or fill material have resulted in adverse impacts to approximately 3,016 linear feet (0.194 acre) in waters of the U.S. in conjunction with the construction of two sediment ponds (No. 1 and 2) and two valley fills (No. 2 and 3) approved under Surface Mining Control and Reclamation Act (SMCRA) permit S-4010-96, issued by the West Virginia Department of Environmental Protection (WVDEP) on August 14, 1996. Mining activities have been ongoing at this site on a sporadic basis following the issuance of the SMCRA permit. Construction of Valley Fill 2 has permanently impacted approximately 1,275 linear feet (0.070 acre) of ephemeral jurisdictional waters. If mining continues and the Valley Fill 2 is constructed to its designed capacity, approximately 200 linear feet (0.009 acre) of additional ephemeral streams and 530 linear feet (0.030 acre) of intermittent streams would be permanently impacted by this valley fill. Pond 1, which controls runoff from Valley Fill 2, has temporarily impacted 685 linear feet (0.043 acre) of intermittent streams. Adverse impacts associated with Sediment Pond 1 would be temporary in nature. It is estimated this valley fill and associated pond were constructed between July 1997 and December 1998.

In addition, mining resumed from November 2001 through September 2002. Construction of Valley Fill 3 was initiated and Sediment Pond 2 was constructed during this timeframe. Approximately 570 linear feet (0.035 acre) of ephemeral streams have been permanently impacted by this valley fill. If constructed to its designed capacity, Valley Fill 3 would permanently impact approximately 1,160 linear feet (0.067 acre) of additional ephemeral streams and 1,584 linear feet (0.089 acre) of intermittent streams. Sediment Pond No. 2, which controls runoff from Valley Fill 3, has impacted approximately 531 linear feet (0.046 acre) of intermittent streams. Adverse impacts associated with Sediment Pond 2 would be temporary in nature. Further, approximately 92 linear feet of the unnamed tributary of Leslie Branch between the proposed toe of Valley Fill 2 and Sediment Pond 1, and 116 linear feet of the first right unnamed tributary of the fifth right tributary of Harmon Branch between the proposed toe of Valley Fill 3 and Sediment Pond have been impacted.

Valley Fill 5 and Sediment Pond 4 are proposed structures that have not been started. Construction of Valley Fill 5 is proposed to permanently impact 2,264 linear feet (0.128 acre) of intermittent streams, and construction of Pond 5 is proposed to temporarily impact 574 linear feet (0.059 acre) of intermittent streams. Construction of Valley Fill 5 and Sediment Pond 4, as proposed, would result in secondary impacts on approximately 73 linear feet of the headwaters of the fifth right unnamed tributary of Harmon Branch. These areas have been included in the temporary impacts noted above.

In total, the unauthorized and proposed activities will result in impacts to approximately 6,168 linear feet (0.388 acre) of intermittent streams and 3,205 linear feet (0.174 acre) of ephemeral streams. **Table A** of this public notice details the proposed mining activities and corresponding information with respect to the proposed impact locations and stream loss (linear feet and acres). All of the proposed valley fills would drain watersheds of less than 250 acres and range from 52.18 acres to 136.25 acres as detailed on the **Table B** of this public notice. Approximately 337 cubic yards of unspecified, non-toxic, durable material would be discharged within the Corps' regulatory jurisdiction in conjunction with construction of the proposed structures.

The footprints of each of the valley fills have been identified on the attached drawing located in Section D, entitled "Figure 2 - Site Plan." Individual site plan maps of each of the Valley fills, which identify the footprints of the fills and the sediment ponds, are depicted on Figures 3, 4 and 5. The top elevation of the valley fills would be constructed to the approximate elevation of the Pocahontas No. 11 seam, which is the principal seam proposed to be mined. However, mining of the Lower Horsepen, Pocahontas No. 9 and Pocahontas No. 10 seams, located 32 feet to 145 feet vertically below the No. 11 seam, is proposed within the footprint of the valley fills only. The footprints of the sediment ponds are identified on the aforementioned Figures 3, 4 and 5. Details regarding the applicant's mine plan can be found in Section N of the applicant's Surface Mining Application on file at the WVDEP.

According to the applicant, the purpose of the project is to construct valley fills to dispose of excess overburden spoil generated by surface mining operations into waters of the United States in order to achieve optimal recovery of available coal reserves within the project area and to provide the mandatory sediment control and access. Plans for the proposed valley fills and associated sediment ponds are attached to this public notice.

As previously described, the work was completed without prior authorization. As required by the rules and regulations governing the Department of the Army permit program, it was determined that since this work does not present an immediate threat to life or property, an After-the-Fact application would be accepted and processed. All investigations and legal proceedings will be suspended pending the outcome of the permit review process. This application will be evaluated on its own merits and no consideration will be given to the applicant's unauthorized work activities or prior expenditures.

ALTERNATIVE ANALYSIS: This project is not considered to be water dependent; therefore, the applicant is required to show that other less damaging practicable alternatives are not available that would achieve the overall project purpose. At this time, the applicant has not submitted the required alternative analysis.

MITIGATION PLAN: To date, the applicant has not submitted a compensatory mitigation plan to this office.

WATER QUALITY CERTIFICATION: A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain certification from the West Virginia Department of Environmental Protection.

HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places (NRHP) has been consulted and it has been determined there are no properties currently listed on the register that are in the area affected by the project. The applicant previously retained the services of Cultural Resources Analysts, Inc. to complete a Phase I archaeological survey. The survey is titled "Phase I Archaeological Survey of the Eckman Mine Near the Community of Eckman, McDowell County, West Virginia" and is dated August 9, 1995. The Phase I survey found no evidence of archaeological or historic sites within the proposed project area. In a letter dated December 28, 1995, the West Virginia Division of Culture History (SHPO) stated the Phase I report addressed their concerns regarding the presence of archaeological resources with the proposed project area. The SHPO concluded no known archaeological sites listed on or

eligible for inclusion in the National Register of Historic Places will be affected by the proposed project.

Section 106 requirements under the National Historic Preservation Act of 1966 have been fulfilled and no further consultation is required, unless requested by the SHPO. A copy of this public notice will be sent to the SHPO for their review. Additional comments concerning archeological sensitivity of a project area should be based upon collected data.

ENDANGERED/THREATENED SPECIES REVIEW: Two federally listed endangered species, the Indiana bat (*Myotis sodalis*) and Virginia big-eared bat (*Corynorhinus townsendii virginianus*) may occur within the project area. Two options are available to the applicant in order to address Indiana bat concerns. The applicant may conduct a mist net survey from May 15 to August 15 using the mist net protocol outlined in the draft Indiana bat Recovery Plan. If this option is chosen, the applicant must provide the United States Fish and Wildlife Service (Service) with their survey plan for review and approval prior to conducting the survey. Another option is to presume Indiana bats are present and conduct all timber removal on the project area from November 15 to March 31. If this option is chosen, an analysis of the post-project Indiana bat summer habitat must be performed within a two-mile radius of the center point of the project area. If the Service determines the extent of disturbance is not significant to affect the Indiana bat, the project may proceed with seasonal restrictions. Conversely, if the Service determines the extent of disturbance is significant and would likely adversely affect the Indiana bat, a mist net survey can be conducted to determine if the Indiana bats are present. Additionally, abandoned mine portals could support summer or winter colonies of the endangered Virginia big-eared bat or provide hibernaculum for the Indiana bat. The applicant must survey the project area for old, abandoned mine portals. If portals appear to have suitable bat habitat characteristics, a Phase I Portal Survey must be prepared for each portal by a qualified mammalogist.

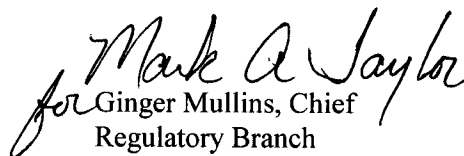
Based on the above, the Corps of Engineers cannot make a determination regarding the effect the proposed project could potentially have on the aforementioned endangered species. This public notice serves as a request to the Service for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the area which would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity. This application will be reviewed in accordance with 33 CFR 320-331, the Regulatory Program of the U. S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Written statements on these factors received in this office on or before the expiration date of

this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

SOLICITATION OF COMMENTS: The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Mrs. Teresa Spagna, Project Manager, South Regulatory Section, CELRH-OR-FS, U. S. Army Corps of Engineers Huntington District, 502 Eighth Street, Huntington, West Virginia 25701-2070. Please note names and addresses of those who submit comments in response to this public notice may be made publicly available. Thank you for your interest in our nation's water resources. If you have any questions concerning this public notice, please call Mrs. Teresa Spagna of the South Regulatory Section at 304-399-5710.


for Ginger Mullins, Chief
Regulatory Branch

(W)

Table A

Jurisdictional Waters Impact Summary

Structure	Permanent Intermittent Impact		Permanent Ephemeral Impact		Total Permanent Impact		Temporary Intermittent Impact		Temporary Ephemeral Impact		Total Temporary Impact		Total Impacts	
	feet	acres	feet	acres	feet	acres	feet	acres	feet	acres	feet	acres	feet	acres
Valley Fill No. 2	530	0.030	1475	0.079	2005	0.109							2005	0.109
Pond No 1							685	0.043			685	0.043	685	0.043
Valley Fill 3	1584	0.089	1730	0.102	3314	0.191							3314	0.191
Pond No. 2							531	0.046			531	0.046	531	0.046
Valley Fill 5	2264	0.128			2264	0.128							2264	0.128
Pond No. 4							574	0.059			574	0.059	574	0.059
Total	4378	0.247	3205	0.181	7583	0.428	1790	0.148			1790	0.148	9373	0.576

Note: Temporary linear feet and acres provided represent the toe of the pond embankment to the toe of the valley fill, and include secondary impacts from sediment transport.

Table B
Mid-Vol Coal Sales, Inc.
Affected Drainage Areas

Disposal Site	Drainage Area at Toe of Fill (acres)
Valley Fill No. 2	52.18
Valley Fill No. 3	94.6
Valley Fill No. 5	136.25

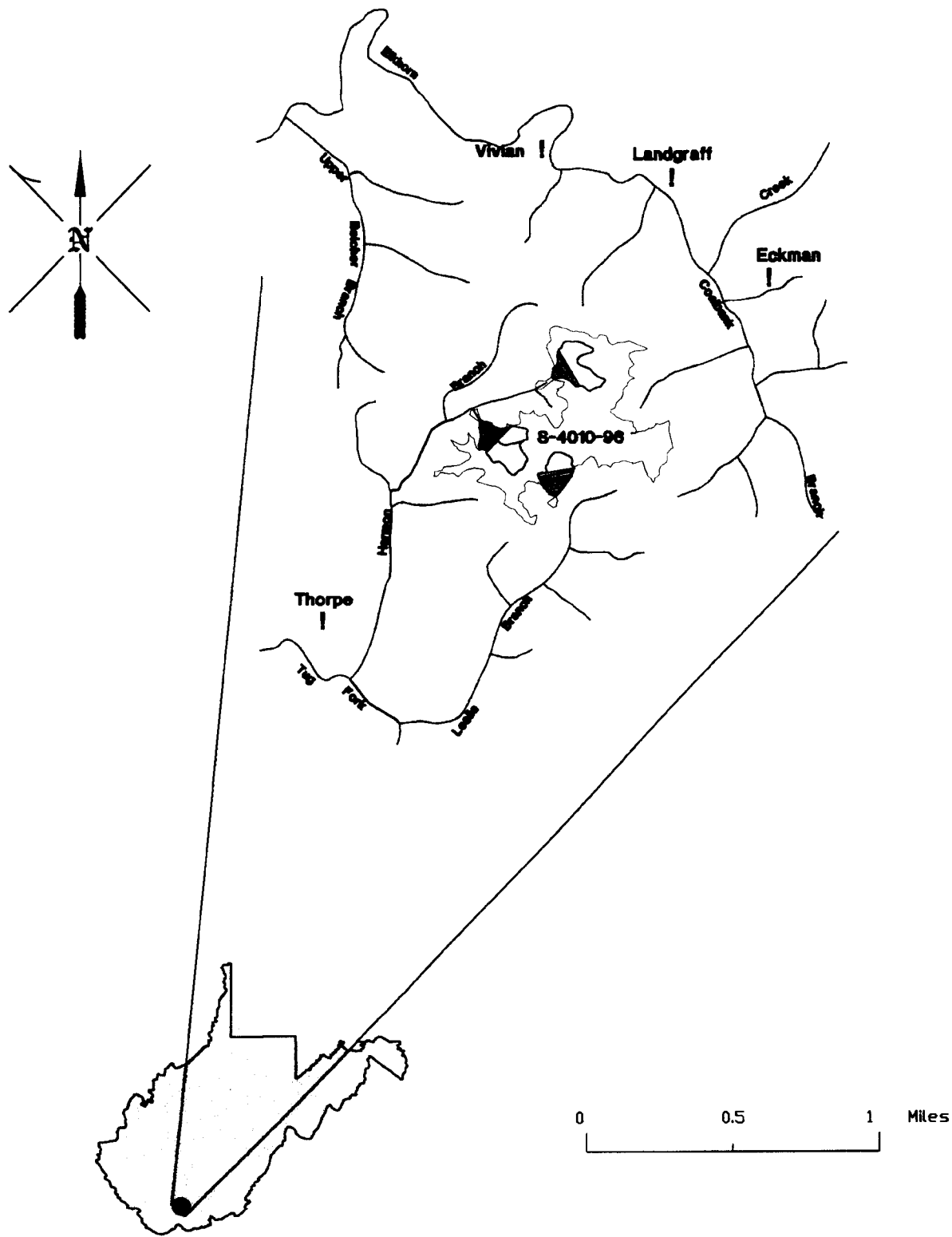
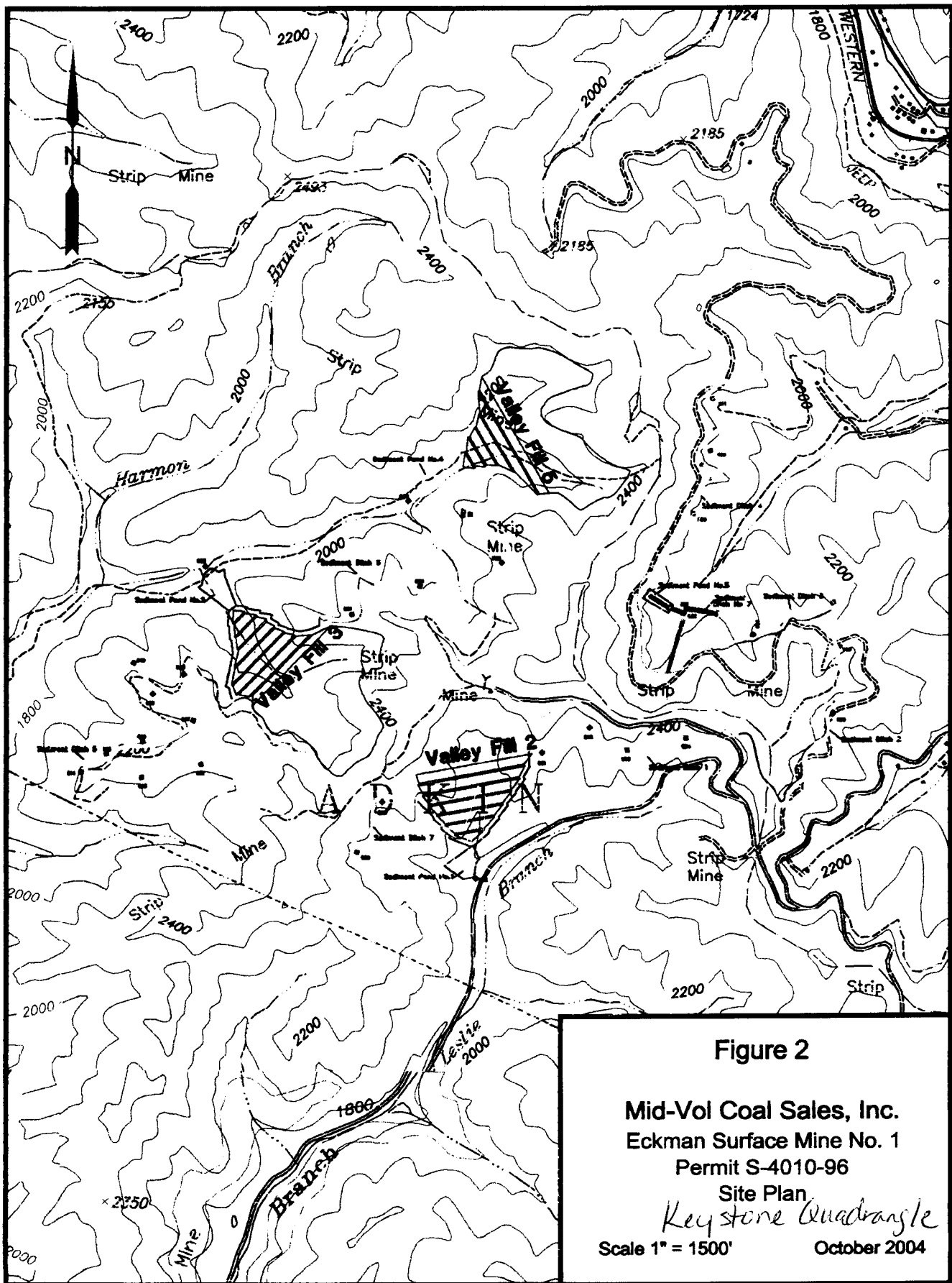


Figure 1. Permit Location Map

Map indicates general location of Mid-Vol Coal Sales, Inc. Eckman Surface Mine No. 1 in McDowell County, West Virginia.



Legend



Approximate Extent of Spoil Placement

Temporary Intermittent Impacts



Secondary Intermittent Impacts

Permanent Ephemeral Impacts

Permanent Intermittent Impacts

Figure 3 Mid-Vol Coal Sales, Inc.

Unnamed Tributary of Leslie Branch Valley Fill 2 & Sediment Pond No. 1

October 2004 Scale 1" = 300'

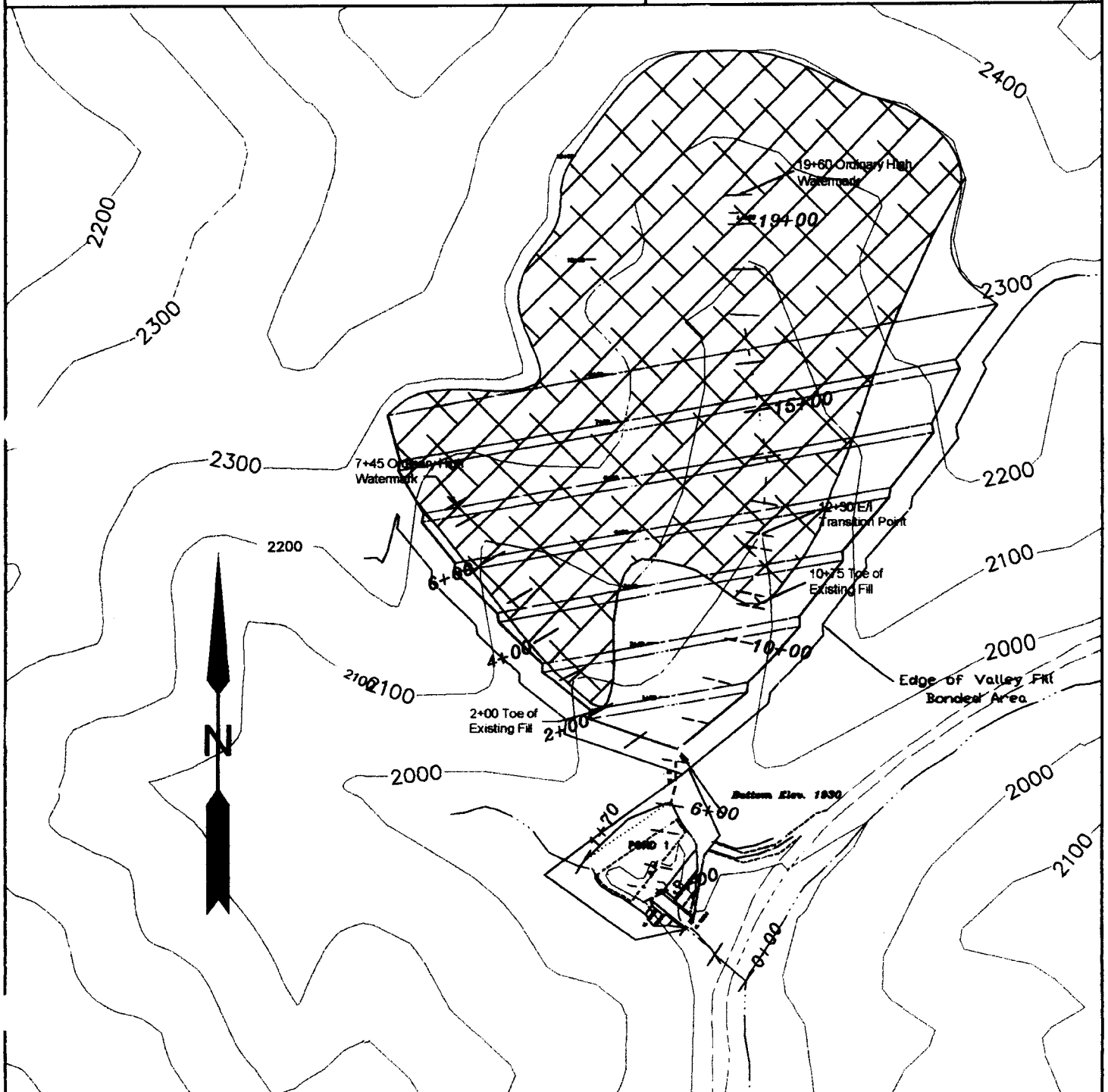
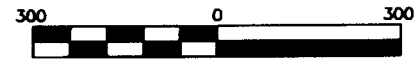
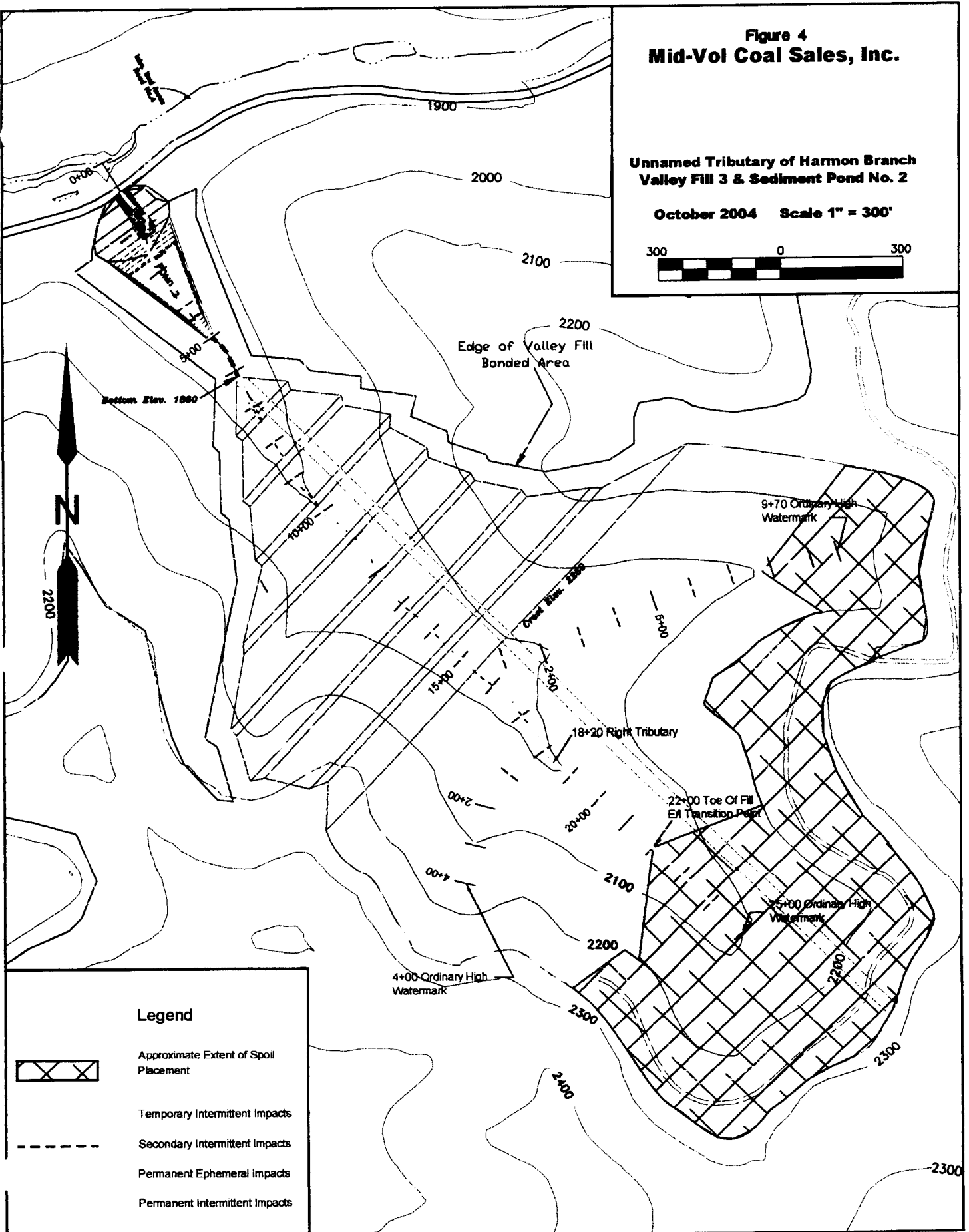
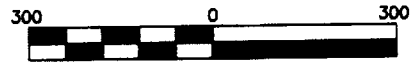


Figure 4
Mid-Vol Coal Sales, Inc.

Unnamed Tributary of Harmon Branch
Valley Fill 3 & Sediment Pond No. 2

October 2004 Scale 1" = 300'



Legend

- Temporary Intermittent Impacts
- Secondary Intermittent Impacts
- Permanent EpheMERal Impacts
- Permanent Intermittent Impacts

Figure 5

Mid-Vol Coal Sales, Inc.

Headwaters of Harmon Branch
Valley Fill 5 & Sediment Pond No. 4

September 2004 Scale 1" = 300'

